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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,581	01/30/2004	Sameer Tannous	112025-0818	8579
24267 7590 03/11/2009 CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210				
EXAMINER JACOBS, LASHONDA T				
ART UNIT 2457		PAPER NUMBER		
MAIL DATE 03/11/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/769,581

Applicant(s)

TANNOUS, SAMEER

Examiner

LASHONDA T. JACOBS

Art Unit

2457

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

This Office Action in response to Applicant's RCE Amendment filed on February 20, 2009. Claims 1, 3, 7, 8, 10, 14, 15, 16-22, 24-28 have been amended. Applicant newly adds claims 29-30. Claims 1-28 are presented for further examination. Claims 29-30 are also presented for examination.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soon et al (hereinafter, "Soon", U.S. Pub. No. 2004/0001443) in view of Clancy et al (hereinafter, "Clancy", U.S. Pat. No. 7,039,703).

As per claims 1, 8, 15, and 22, Soon discloses a method, apparatus and computer readable medium for modifying and testing a network protocol comprising:

- executing a test of said network protocol stack using a processing system, the test modeling each protocol of said plurality of protocols of said protocol stack as separate objects, the test simulating communication between a plurality of devices using said network protocol (paragraphs 0020 and 0031).

However, Soon does not explicitly disclose:

- receiving a command comprising code to modify one of said plurality of protocols in said protocol stack; and
- performing said modification on said one of said plurality of protocols in said protocol stack, while the test is executing, by changing said separate object corresponding to said of said plurality of protocols in said protocol stack.

Clancy discloses dynamically modifying functionality a configurable communications protocol stack comprising:

- receiving a command comprising code to modify one of said plurality of protocols in said protocol stack (col. 4, lines 18-67 and col. 5, lines 1-22); and
- performing said modification on said one of said plurality of protocols in said protocol stack, while the test is executing, by changing said separate object corresponding to said of said plurality of protocols in said protocol stack (col. 4, lines 18-67 and col. 5, lines 1-22),

Therefore, it would have been obvious to one of ordinary skill in the art to modify Soon by implementing or incorporating a method for dynamically modifying the protocol stack for the purpose of upgrading, replacing or modifying the functionality of the protocol stack without interrupting existing services.

As per claims 2, 9, 16 and 23, Soon discloses:

- wherein said command is received in interpreted code (paragraphs 0031 and 0032).

As per claims 3, 10, 17 and 24, Soon further discloses:

- determining said one of said plurality of protocols in said protocol stack to modify responsive to receiving said command (paragraphs 0033-0035).

As per claims **4, 11, 18** and **25**, Soon further discloses:

- determining whether said command is adding a message to said one of said plurality of protocols (paragraphs 0023 and 0032-0033); and
- adding said message to said one of said plurality of protocols (paragraphs 0023 and 0032-0033).

As per claims **5, 12, 19** and **26**, Soon further discloses:

- determining whether said command is to remove a message from said one of said plurality of protocols (paragraphs 0023 and 0032-0033); and
- removing said message from said protocol (paragraphs 0023 and 0032-0033).

As per claims **6, 13, 20** and **27**, Soon further discloses:

- determining whether said command is to modify an existing message in said one of said plurality of protocols (paragraphs 0023 and 0032-0033);
- removing said existing message from said one of said plurality of protocols (paragraphs 0023 and 0032-0033); and
- adding a new message to said one of said plurality of protocols including said existing message with modifications in said command (paragraphs 0023 and 0032-0033).

As per claims **7, 14, 21** and **28**, Soon further discloses:

- determining whether said command is to modify a state machine of said one of said plurality of protocols (paragraphs 0018, 0036, and 0044-0045); and
- modifying said state machine of said one of said plurality of protocols responsive to said command (paragraphs 0018, 0036, and 0044-0045).

As per claims 29 and 30, Soon discloses the invention substantially as claims discussed above.

However, Soon does not explicitly disclose:

- wherein said performing said modification while the test is executing performs the test absent recompilation of said network protocol stack or restart of the test.

Clancy discloses dynamically modifying functionality a configurable communications protocol stack comprising:

- wherein said performing said modification while the test is executing performs the test absent recompilation of said network protocol stack or restart of the test (col. 4, lines 18-67 and col. 5, lines 1-22).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Soon by implementing or incorporating a method for dynamically modifying the protocol stack for the purpose of upgrading, replacing or modifying the functionality of the protocol stack without interrupting existing services.

Response to Arguments

3. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,625,648 to Schwaller et al

U.S. Pub. No. 2003/0037314 to Apuzzo et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LASHONDA T. JACOBS whose telephone number is (571)272-4004. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LaShonda T Jacobs/
Primary Examiner, Art Unit 2457

ltj
March 9, 2009